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Updates from the International Criminal Courts

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UPDATES FROM THE INTERNATIONAL CRIMINAL COURTS

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

On November 28, 2006, the ICTY Appeals Chamber partially reversed the Trial Chamber's holding concerning local Bosnian Serb politician Blagoje Simić. The Trial Chamber had found that Simić participated in a joint criminal enterprise (JCE) designed to persecute non-Serbs in northern Bosnia through detention in inhumane conditions, torture, and sexual assault. On October 17, 2003, the Trial Chamber sentenced Simić to 17 years imprisonment. In contrast, the Appeals Chamber found that Simić's trial had been unfair because he had not been informed of the JCE allegation until after the Prosecution rested its case. While the Appeals Chamber also reversed his conviction for persecution in so far as it was based on cruel and inhumane treatment, it upheld Simić's conviction for aiding and abetting persecution based on the unlawful detention of non-Serbs, detention in inhumane conditions, and forced labor and displacement. The Chamber's reversals resulted in a reduction in Simić's sentence to fifteen years.

The ICTY Appeals Chamber sentenced Stanislav Galić, a commander of the Bosnian Serb Army's Sarajevo-Romanija Corps (SRK), to life imprisonment on November 30, 2006. The Court delivered the maximum penalty for the first time after confirming Galić's role in a campaign of sniper attacks and artillery bombardment intentionally directed at Sarajevo civilians from 1992 to 1994. The Chamber dismissed all 19 grounds of appeal, including his claim of wrongful conviction for "acts of threats of violence the primary purpose of which was to spread terror among the civilian population." Galić was found to have had the intent to terrorize the civilian population of Sarajevo. The trial of his successor as commander of the SRK, Dragomir Milošević, began on January 11, 2007, at the ICTY.

On December 8, 2006, the ICTY Appeals Chamber granted Vojislav Šešelj's appeal against the Trial Chamber's imposition of stand-by counsel. Due to his obstructionist and disruptive behavior, the Trial Chamber had decided on August 21, 2006, to assign counsel to Šešelj. That decision was overturned by the Appeals Chamber on October 20, 2006. Contemporaneous with that order,

the Appeals Chamber warned Šešelj that the Trial Chamber could assign counsel if he used his right to self-representation to "substantially obstruct the proper and expeditious proceedings." On October 25, 2006, the Trial Chamber assigned stand-by counsel to perform a variety of functions in Šešelj's defense. The Appeals Chamber based its reversal on the Trial Chamber's failure to establish that Šešelj had engaged in further obstructionist behavior or to provide him a true opportunity to prove that he understood the procedural requirements necessary to represent himself. Šešelj subsequently announced that he would end a hunger strike that he began on November 11, 2006. After an examination of Šešelj by the Tribunal's doctor, the trial was suspended until his health permits him to effectively represent himself.

Former Bosnian Serb soldier Dragan Zelenović pled guilty to seven counts of torture and rape as crimes against humanity on January 17, 2007. The plea agreement describes Zelenović's participation in a widespread and systematic attack on the village of Foča. There, in July 1992 a group of Bosnian Muslim women and children were arrested, detained and interrogated. Zelenović admitted to raping and torturing some of the detainees, as well as aiding and abetting rapes and torture committed by other perpetrators. His plea agreement requested a sentence between seven and ten years imprisonment, while the Prosecution advised a sentence of ten to fifteen years.

On November 14, 2006, the Court of Bosnia and Herzegovina convicted Radovan Stanković, its first Rule 11 *bis* indictee transferred from the ICTY. The transfer is part of the overall completion strategy for the Tribunal. The Court found Stanković guilty of rape and other crimes against humanity, and sentenced him to 16 years' imprisonment. The indictment charged that in 1992 Stanković was in charge of a house in Foca, Bosnia, where Muslim women and girls were captured so that Serbian soldiers and men could rape them. An ICTY press release noted that the judgment "justifies the [ICTY]'s strategy of transferring cases, expertise and know-how to the judiciaries in the region, and particularly Bosnia and Herzegovina." The ICTY Referral Bench also ordered that

Vladimir Kovacevic be handed over to the Republic of Serbia so that authorities can determine the appropriate court for his trial. As with Stanković, the referral was part of the ICTY completion strategy, and the case was referred in accordance with Rule 11 *bis*. The ICTY Trial Chamber, however, previously found Kovacevic incompetent to stand trial, so his prosecution does not appear imminent.

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

On December 6, 2006, former pastor Elizaphan Ntakirutimana completed his sentence of ten years' imprisonment and was released from prison. In February 2003, Ntakirutimana was found guilty of aiding and abetting genocide and, on appeal, guilty of aiding and abetting extermination as a crime against humanity. The Trial Chamber found that Ntakirutimana had ordered the removal of Murambi Church's roof in Bisesero region, which exposed the Tutsi sheltering in the church and facilitated their murders. Ntakirutimana was the first ICTR convict to be released after completing his sentence. Ntakirutimana died six weeks after his release at the age of 83.

A Roman Catholic priest, Athanase Seromba, was found guilty of genocide and extermination as a crime against humanity on December 13, 2006. Seromba was in charge of a church that provided refuge to some 2000 Tutsis. The Chamber found that Seromba had the church bulldozed and ordered that all who tried to escape be shot. Seromba was acquitted of a different charge of conspiracy to commit genocide. Thus, he was sentenced to only 15 years in prison, plus a credit for the four years already served. The relatively short sentence prompted the Prosecutor to appeal the verdict as well as other aspects of the judgment. Seromba is the first priest to be tried at the ICTR.

Trial Chamber II accepted a revised guilty plea on December 14, 2006, from former businessman and youth organizer Joseph Nzabirinda. The initial indictment of Nzabirinda, nicknamed "Biroto," charged him with genocide, conspiracy to commit genocide, extermination as a crime against humanity, and rape as a crime against human-

ity. Although the Prosecution argued that Nzabirinda was “an approving spectator” during attacks, it withdrew some of the charges plead in the 2001 indictment because of a lack of evidence. Furthermore, the Defence agreed that while Nzabirinda was not a physical perpetrator of the crimes, he was liable as an accomplice. The new indictment and the plea agreement charge Nzabirinda with one count of murder as a crime against humanity.

**PROSECUTOR V. JEAN MPAMBARA,
CASE NO. ICTR-01-65-T**

On September 11, 2006, the ICTR Trial Chamber delivered its judgment in *Prosecutor v. Jean Mpambara*. Jean Mpambara, the former *bourgmestre* of Rukara Commune, was charged with genocide or complicity in genocide and extermination as a crime against humanity for attacks on Tutsi refugees in Rukara Commune over a period of several days in April 1994. Mpambara denied all allegations and insisted that he had attempted to maintain security and protect the refugees. The Prosecution withdrew the complicity count in its closing brief. The Trial Chamber found Mpambara not guilty on the remaining counts and called for his immediate release from the custody of the Tribunal.

Mpambara was not alleged to have physically participated in the attacks, but to have participated in a joint criminal enterprise (JCE) to destroy the Tutsi racial or ethnic group throughout Rwanda and to have ordered, instigated, and aided and abetted the crimes. The Trial Chamber found that, in some of its submissions, the Prosecution sought to prove “criminal responsibility for commission by aiding and abetting the physical perpetrators in furtherance of a JCE.” The Trial Chamber described that statement as “legally incoherent,” noting that aiding and abetting is a form of *accomplice liability*, whereas participation in a joint criminal enterprise is a type of *direct commission* of a crime with other persons. As stated by the ICTY Appeals Chamber in *Kvočka et al.*, “it would be inaccurate to refer to aiding and abetting a joint criminal enterprise.” The Trial Chamber therefore decided to “consider whether the material facts show either that the Accused participated in a joint criminal enterprise, or that he aided and abetted others in the commission of crimes.”

The Prosecution also alleged that as *bourgmestre* Mpambara had a duty under Rwandan law to prevent and punish criminal acts. Liability for failing to discharge a legal

duty requires proof that an accused is bound by a specific legal duty to prevent a crime, that the accused was aware of and willfully refused to discharge this legal duty, and that the crime took place. Although the Prosecution provided evidence supporting these allegations in its closing brief, because neither the indictment nor the pre-trial brief identified the source or scope of Mpambara’s legal duty, the Trial Chamber determined that he had not been given reasonable notice of the charge and that no conviction could be entered on this basis.

The case against Mpambara revolved around three sets of events over a six-day period in 1994: looting and killing of Tutsi residents of Gahini *Secteur* on April 7 and 8; an attack on Gahini Hospital on April 9; and attacks on April 9 and 12 at the Parish church of Rukara. Much of the evidence against Mpambara was circumstantial. In assessing whether circumstantial evidence proves a conclusion “beyond a reasonable doubt,” the Trial Chamber applied the standard adopted by the ICTY Appeals Chamber in the *Mucic et al.* judgment:

It is not sufficient that it is a reasonable conclusion from that evidence. It must be the *only* reasonable conclusion available. If there is another conclusion which is also reasonably open from that evidence, and which is consistent with the innocence of the accused, he must be acquitted.

The killings on April 7 and 8 in Gahini *Secteur* stemmed from attacks on the homes of five Tutsis. The attackers surrounded each home, broke down doors, killed anyone inside the house and looted whatever objects could be found. On April 8 instructions were given by Jean Bosco Butera, a civilian, for more killings and the attackers were divided into four groups, which proceeded to “ravage” a portion of Rukara Commune for the remainder of that day. The Trial Chamber found that “the evidence [left] open the reasonable possibility that Mpambara was overwhelmed by the situation” in Gahini *Secteur*, that he did not know with any certainty who was leading the attacks, and would have been incapable of restoring order with the law enforcement resources at his disposal. The uncorroborated testimony of Prosecution Witness AVK alleged that Mpambara instigated the killing of Tutsis on April 7 at Akabeza Centre and attended a meeting during which attacks were planned. However, a more credible witness contradicted this testimony, leaving reasonable doubt that

Mpambara had criminal intent or contributed to the attacks.

The morning of April 9, Gahini Hospital was surrounded and attacked by a mob armed with “clubs, spears, machetes, and other traditional weapons.” Refugees had begun to seek refuge at the hospital between April 7 and 8, and by April 9 there were between 20 and 50 refugees waiting for assistance on the steps of the hospital’s main building. Mpambara arrived at the hospital compound sometime after the attack, and there was evidence beyond a reasonable doubt “that after [his] departure, *Interahamwe* invaded the hospital compound a second time and killed Tutsi refugees.” There was conflicting witness testimony about Mpambara’s role in the attacks. Mpambara testified that he left the chief of communal police and *gendarmes* at the hospital, “plead[ing] with them that they should do everything they can to make sure that no one else is killed in that place.” The Trial Chamber found that the evidence did not show that Mpambara actively participated in, encouraged, was present during, or deliberately failed to stop the attack.

Beginning on April 7, refugees from Rukara commune began to gather at the Rukara Parish church. Defence witness Father Ganuza Lasa Santos testified that “nature itself had gone silent” as thugs roamed the streets of Rukara Commune and people boarded up their homes. By April 9 there were approximately 3,000 refugees at the church compound, about 900 of whom were children. In the late afternoon of April 9, groups of “civilians armed with machetes and a few grenades, allegedly distributed by *gendarmes*,” attacked the church, killing numerous people. By the late afternoon of April 12, the refugees were barricaded inside the church. That night the Parish was attacked again, and any refugees who tried to escape were beaten to death with clubs or hacked to death with machetes. By morning, between one and two thousand Tutsi men, women and children had been massacred.

There was uncorroborated testimony that Mpambara instigated the attack and distributed grenades and stones to the attackers. However, Father Santos testified for the Defence that “at all times” Mpambara demonstrated a “commitment to defend the refugees [H]e didn’t want to see anyone else being killed.” Although he indicated that he wanted to leave he said, “I am the *bourgmestre* and I have to stay.” According to Santos, Mpambara “could see himself being

accused as a *bourgmestre* and felt powerless because of the situation. He felt like fleeing in order not to be involved but, on the other hand, he felt obliged to stay — in order to live up to his responsibilities.” The Trial Chamber found that the evidence that Mpambara contributed to the attack was “weak, disconnected, and uncorroborated.”

PROSECUTOR V. THARCISSE MUVUNYI, CASE NO. ICTR-2000-55A-T

On September 12, 2006, the ICTR Trial Chamber delivered its judgment in the case of *Prosecutor v. Tharcisse Muvunyi*. Muvunyi was indicted on five counts—genocide, or alternatively, complicity in genocide, direct and public incitement to commit genocide, and rape and other inhumane acts as crimes against humanity. These charges were based on events that occurred in the Butare *prefecture* between April and June 1994. The Trial Chamber found Muvunyi guilty on all counts with the exception of complicity in genocide, which was charged in the alternative of genocide, and the crime against humanity of rape, based on evidentiary grounds. After considering various aggravating and mitigating factors, the Trial Chamber sentenced Muvunyi to twenty-five years imprisonment.

The Trial Chamber determined that Muvunyi held the Office of Commander of *Ecole de sous-officiers* (ESO). Relying on the ICTY Appeal Chamber’s holding in *Celebici*, the Trial Chamber found that absence of a formal appointment, as was the case for Muvunyi, is not fatal to the finding of superior criminal responsibility so long as the *de facto* superior exercises effective control over his subordinates. As ESO commander, Muvunyi was “the most senior officer and commander on the ground with power and authority to make day-to-day operational decisions.” As a consequence he was found to have exercised effective control over ESO soldiers during the period of April to mid-June 1994.

Muvunyi was found individually responsible for aiding and abetting genocide for deliberately refusing to prevent an attack by ESO soldiers on Tutsi refugees at the *Groupe scolaire*. By virtue of Muvunyi’s position of authority as the most senior military officer in Butare, the proximity of the ESO Camp to the *Groupe scolaire*, the repeated nature of the attacks, and Muvunyi’s instructions to protect one Tutsi family from harm, the Chamber determined that he could not have been unaware that his subordinates were commit-

ting genocidal acts. Although there was no evidence that Muvunyi directly engaged in the attack, the Trial Chamber found that his overall conduct substantially contributed to the crime. For example, he implicitly permitted a large number of his subordinates to leave the ESO camp fully equipped with ammunition to attack unarmed refugees. Additionally, his selective treatment of the refugees was found to amount to tacit encouragement of the crimes.

Muvunyi was also found responsible as a superior for the genocidal killing of Tutsi civilians by ESO soldiers at the Butare University Hospital, University of Butare, Beneberika Convent, Mukura forest, and various roadblocks in Butare. Despite insufficient evidence to hold Muvunyi individually responsible for the attacks at these locations, the attacks’ widespread nature, high-level coordination, and proximity to the ESO camp showed that he knew or should have known about them. As Muvunyi failed to take steps to prevent or punish his subordinates for these crimes, he bore superior responsibility for genocide.

In finding Muvunyi guilty of direct and public incitement to commit genocide, the Trial Chamber adopted *Akayesu*’s elaboration of the elements of “direct” and “public.” The “direct” element requires “more than a vague or indirect suggestion of incitement,” thus implying that the expression must specifically provoke another to engage in criminal conduct. The Trial Chamber noted that cultural and linguistic factors, the nature of the audience, and whether the message was immediately understood by the audience are important considerations in making this determination. With regard to the “public” element, the Chamber took into account “the place where the incitement occurred and whether attendance was selective or limited.” The number of listeners and the medium by which the message is communicated may also indicate whether the incitement was public.

The Trial Chamber’s finding of guilt was primarily based on two public meetings of Hutu civilians at which Muvunyi likened Tutsis to “snakes” and “poisonous agents” and associated them with the wartime enemy. Such characterizations during a time of inter-ethnic killing, and contextualized within the Rwandan language and culture, were found tantamount to condemning members of the Tutsi ethnic group to death. At one of the meetings, Muvunyi also reprimanded the *bourgmestre* of Gikonko for hiding a Tutsi

man named Vincent Nkurikiyinka, and demanded that he be brought forward to be killed. As a result, the man was produced and killed by the mob. The Trial Chamber concluded that these facts satisfied the “direct” and “public” elements of the charge. Moreover, Muvunyi had the requisite mental intent for the crime, as he knew his audience would understand the implication of his words and intended his words to provoke genocide.

The Trial Chamber also found Muvunyi guilty as a superior for the crime against humanity of other inhumane acts. Muvunyi had knowledge that his subordinates engaged in inhumane treatment including the mistreatment of individuals at the *Économat General*, the Butare Cathedral, and at the ESO camp; the humiliation of two Tutsi women at Butare roadblocks; and the beating of Tutsi civilians at Beneberika Convent and *Groupe scolaire*. Despite having available material and human resources at the ESO camp, Muvunyi failed to take necessary and reasonable measures to prevent or punish the soldiers for these actions.

Finally, the Trial Court found Muvunyi not guilty of either individual or superior responsibility for the crime against humanity of rape. The evidence proved that Tutsi women as young as 17 years old were raped in the Butare and Gikongoro *prefectures* during the period in question. However, it did not support the specific allegation in the indictment that Ngoma Camp soldiers and *Interahamwe* militia members committed the rapes. Instead, it showed that ESO soldiers were responsible. Although the Prosecutor’s pre-trial brief and opening statement attempted to cure this omission by alleging the responsibility of ESO soldiers for these crimes, the Trial Chamber found that “the Accused did not have the opportunity to defend himself against such a fundamentally different case.” As a consequence, the Trial Chamber found Muvunyi not guilty on this count.

Notably, just prior to trial, without explanation the Prosecution had sought to amend the indictment and withdraw the rape charge in its entirety. The Trial Chamber denied the request, noting that the Defense had likely expended time and resources defending the charge, and that questions of double jeopardy and judicial economy merited against dismissal. Considering the substantial evidence the Prosecution brought forward proving that rapes indeed occurred, it is unclear why it did not seek instead to amend the indictment to

name ESO soldiers as the perpetrators of the rapes.

In determining Muvunyi's sentence, the Trial Chamber considered as an aggravating factor Muvunyi's failure to exercise his duty to protect the community and his selective exercise of authority to save civilian lives. As mitigating factors, the Trial Chamber noted that, with the exception of the incitement conviction, the Prosecution failed to prove that Muvunyi was present for, gave direct orders to commit, or directly participated in or encouraged the crimes of which he was convicted. The Trial Chamber also considered Muvunyi's good character prior to 1994, the fact that he spent a good portion of his life in the service of his country, and the lack of evidence that he had ever previously discriminated on the basis of ethnicity.

INTERNATIONAL CRIMINAL COURT

ICC ASSEMBLY OF STATES PARTIES

The Fifth Session of the Assembly of States Parties (ASP) to the International Criminal Court (ICC) opened in The Hague on November 23, 2006. As the management oversight and legislative body of the ICC, the full ASP meets annually to make important decisions regarding the judicial and administrative activities of the Court for the following year. The ASP is composed of representatives of ICC States Parties. The Fifth Session addressed seven issues: adoption of the 2007 budget, the Court's Strategic Plan, election of the Board of Directors for the Trust Fund for Victims, the draft headquarters agreement with the Netherlands, permanent premises for the Court, the Special Working Group on the Crime of Aggression, and the 2009 Review Conference. Budgetary issues and the Strategic Plan generated the most discussion.

The debate over the 2007 budget focused on proposed cuts in areas such as funding for witness protection, investigations, outreach and communication, and the Court's projects for achieving cooperation with States and parties involved in investigations. States and non-governmental organization (NGO) participants argued that the proposed budget provided insufficient resources for expert support to investigative teams that interview witnesses, legal aid for defense counsel, and financial assistance for victims' representatives. States debated whether to accept the budget proposal as a package, or to decide on specific budget items separately. The ASP

concluded with a compromise that adopted the proposed budget except for the cuts to outreach and communication. It also required that the Court absorb costs related to its victim and witness programs.

Similar concerns surfaced in the debate over the Court's Strategic Plan. Pursuant to a 2004 request by the Committee on Budget and Finance, the Court formulated a Strategic Plan. Through this Plan, the Court sought to identify concrete steps to ensure that victims and witnesses participated extensively, as well as to increase cooperation with and awareness of its activities. It presented a revised version to the ASP members prior to the Fifth Session. The Plan emphasized the importance of three core goals: achieving impartial investigations, quality prosecutions, and fair and expeditious trial proceedings. Human rights NGOs and States supportive of the ICC have repeatedly criticized the Strategic Plan's failure to focus strongly enough on maximizing the ICC's impact on local communities affected by the crimes and possessing an interest in the Court's investigations.

These critics argued that the Plan fails to ensure victim participation, education, protection, and reparations. NGOs participating in the ASP stated that the absence of a constant ICC staff presence in Uganda and the Democratic Republic of Congo (DRC) has created public distrust in the ICC by creating a lack of information and preventing interaction with Court personnel. Some NGOs recommended an increased ICC in-country presence, more visits by top Court officials, construction of ICC field offices, and a possible move toward on site judicial proceedings. Other NGOs called for an improved outreach and communications approach tailoring strategies to each situation under investigation or prosecution, and prioritizing engagement with local communities.

The ASP concluded with four main resolutions. Aside from acceptance of the budget, the States Parties resolved to continue dialogue on the Strategic Plan and try to resolve the issues raised. The ASP also made decisions involving the permanent premises for the Court and strengthening the ICC in terms of State cooperation, cooperation with the UN, and outreach. The Resumed Fifth Session began in New York on January 29, 2007. It continued discussions on the Crime of Aggression and Board of Directors elections for the Trust Fund for Victims.

UNITED STATES AND THE ICC

In September 2006, Congress amended the American Servicemembers Protection Act (ASPA) in the Fiscal Year 2007 Defense Authorization Bill. The amendment strikes a provision conditioning International Military Education and Training (IMET) aid on recipient states agreement to form Bilateral Immunity Agreements (BIAs) with the U.S. On October 2, 2006, President George Bush also waived the conditions for twenty-one countries.

Originally passed in 2002, ASPA conditions U.S. IMET aid to certain ICC States Parties' on their agreement to grant U.S. service members immunity from ICC investigations or prosecutions. When a country signs a BIA with the U.S., it agrees not to surrender U.S. personnel, including service members, nationals, and non-nationals working with the U.S., to the ICC. The U.S. refers to the BIAs as "Article 98 agreements," in reference to Article 98 of the Rome Statute. Article 98 prevents the Court from proceeding with a request for an individual's surrender if the request would require the sending State to violate previously negotiated treaties with the individual's state of nationality. International lawyers, the ICC, and states that have refused to sign BIAs argue that Article 98 applies only to previously existing Status of Forces Agreements. They argue that the U.S. interpretation of the article is not only incorrect, but a violation of the ICC States Parties' obligation to arrest and surrender perpetrators when so requested by the Court.

U.S. legislators and executive branch officials have begun to realize that withholding IMET aid from strategically important allies undercuts U.S. foreign policy goals. Much of the IMET aid was cut from programs intended to fight terrorism, narcotics trafficking, and corruption. John Bellinger, chief legal advisor to U.S. Secretary of State Condoleezza Rice, has argued that imposing BIAs undermines U.S. foreign policy objectives, and Secretary Rice recently stated that the US is "shooting itself in the foot" with its ICC-BIA policy. While relenting on ASPA's IMET restrictions, the U.S. still withholds Economic Support Funds (ESF) from non-exempt ICC States Parties that refuse to sign BIAs. ESF aid includes funds for poverty alleviation, development of democratic governance, and rule of law programs. The Nethercutt Amendment, added to the Foreign Operations Appropriation Bill in

2004, prohibits ESF from being disbursed to many countries in need of development assistance. President Bush recently waived ESF cuts for fourteen countries, but human rights groups are calling for a complete repeal of the Nethercutt Amendment.

UPDATE ON SITUATIONS

On January 29, 2007, Pre-Trial Chamber I held a public hearing where it confirmed charges against Thomas Lubanga Dyilo, former leader of the Union of Congolese Patriots and the first suspect held in ICC custody. Chief Prosecutor Luis Moreno-Ocampo has charged Lubanga with individual criminal responsibility for the war crimes of enlisting, conscripting, and using children in the conduct of hostilities. Presiding Judge Claude Jorda read the decision, which the Court reached after confirmation of charges hearings held November 9–28, 2006. Moreno-Ocampo predicts the trial will commence later this year. While Court officials lauded the proceedings as a milestone in international criminal justice, human rights groups continue to criticize the Prosecutor for failing to indict Lubanga for other crimes, including murder, rape, and torture, and for failing to issue arrest warrants for the other parties to the conflict.

The debate termed “peace vs. justice” persists in Uganda, where peace talks between the rebel Lord’s Resistance Army (LRA), led by indicted leader Joseph Kony, and the Ugandan government have continued to stall. Uganda referred the situation involving this conflict to the ICC in 2003 and arrest warrants were issued against LRA leaders in 2005. Kony has previously stated that the LRA refuses to negotiate unless the ICC drops all charges against its leadership, but the Government of Uganda has refused to accept those conditions. The peace talks have been conducted in the Sudanese town of Juba since July 2006. After Sudanese President Omar Hassan al-Bashir stated on January 9, 2007, that the LRA was no longer welcome in Sudan, the LRA announced that it refuses to negotiate unless the talks are moved to a more neutral state. The LRA contends that Sudan’s Khartoum government and the ICC are biased toward the Government of Uganda. Compounding matters, human rights groups continue to urge the Prosecutor to investigate other parties to the conflict, such as individuals in the Ugandan government.

In his December 14, 2006, report to the Security Council, the Prosecutor announced his office had almost completed its investigation into the crimes in Darfur, Sudan. The investigation focused on serious crimes that took place in 2003 and 2004, and the individuals bearing the greatest responsibility for the commission of those crimes. The Prosecutor stated that the investigation has produced sufficient evidence to identify specific individuals committing crimes against humanity and war crimes, including rape, murder, persecution, and torture. The ICC may only exercise jurisdiction if a national government is unwilling or unable to conduct prosecutions of alleged perpetrators of crimes within the Court’s subject matter jurisdiction. Moreno-Ocampo reported that the Khartoum government’s purported effort to conduct national prosecutions fails to address the gravest crimes of interest to the ICC. The prosecutorial staff visited Khartoum in January 2007 to gather information on reports that fourteen individuals had been arrested for committing serious international crimes. Moreno-Ocampo plans to submit his case to the Pre-Trial Chamber in February 2007. *HRB*

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